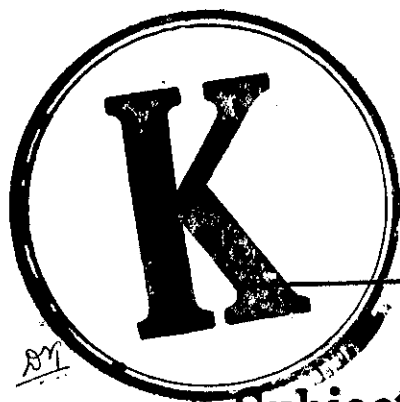


1942.

File No. 0 *Industrial disputes/42*



Legal DEPARTMENT

A BRANCH

Subject:—

*P 20(E)*

*Opinions under the Bombay*

*Industrial Disputes Act 1938*

File No. 0

Std. Sectt. Slip 24 B e. *Industrial disputes/42*

# C O N T E N T S.

Legal Department File No. O. Ind. Disputes/ 1942.

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M.V.V./1.5.56.

*DR*  
7-5-56

Office of the R.L.A.

The Management of the Mill Khatau Makanji Spinning and Weaving Co., Ltd., had served a notice on 29-8-1940 in Form K on the elected representatives of the employees belonging to the Hook Folding Section under section 28 (1) of the Bombay Industrial Disputes Act, 1938, to the effect that as there was not enough work for hook folders they proposed to reduce the existing complement of hook folders from 13 to 4 only. No agreement between the parties having been found possible, the matter was referred to the Conciliator and a settlement was arrived at during the course of conciliation proceedings to the effect that all the hook folders then working in that Department should be given pali(turn) in that Department and When they had no work as hook folders they should be employed as split cutters on split cutters wages. The employees agreed to this settlement. The full terms of the agreement are at page 7 ante and the agreement came into force 27-10-1940. On 4-6-1942, the management again gave a notice under section 28(1) and Rule 44 to the representatives of employees to the effect that as they have no work of hook folding and as ~~hence~~ they do not hope for any improvement for a long time to come, they desire completely to do away with the Hook Folding Section. Again no again no agreement was possible between the parties and the management referred the matter to the Conciliator. It is contended on behalf of the employees that as the settlement arrived at in September 1940 has not been terminated by either party giving a notice under section 77(1) of the Bombay Industrial Disputes Act and is therefore still in operation, the management cannot give a notice of change closing the section without first terminating the existing settlement. The management on the other hand argue that the notice of change in respect of which the previous settlement was arrived at was in regard to reduction in the number of employees in the section, while the present relates to the closure of the section, which is entirely a different matter and the notice of change given by is valid.

They further argue that even if the notices may be to be in respect of the same change, section 28(3) prevents notices regarding the same change being given for a period of 2 months only after the completion of the conciliation proceedings and as this period has already elapsed, they are within their rights in giving the present notice of change for closure of the Hook Folding Section.

2. The questions for the consideration of the R.L.A. are:

(1) Whether the notice of change given by the management of the Mill Khatau Mahanji Spinning and Weaving Co., Ltd., is valid; if not,

(2) Whether conciliation can be proceeded with.

3. Section 73(2) of the Bombay Industrial Disputes Act, 1938 provides that no employer shall make any such change (i.e. any change in any industrial matter in regard to which a standing order has been settled under section 26 or which is mentioned in Schedule II) in contravention of the terms of a registered agreement, a settlement or an award. Section 76(1) provides that a registered agreement, a settlement, a submission or an award shall be binding upon all persons who are parties thereto. Under section 77(1) a registered agreement, a settlement or award would cease to have effect on the date specified therein or if no such date is specified therein on the expiry of the period of six months from the date on which notice in writing to terminate such agreement, settlement or award, as the case may be is given by any of the parties thereto to the other party. Section 28(3) provides:

"After conciliation proceedings in regard to any industrial dispute arising out of a notice relating to any change given under sub-section (1) or (2) has been completed, no

**3.**

notice with regard to the same change shall be given before the expiry of two months from the date of such completion. If at any time after the expiry of the said period of two months any employer or employee again desires the same change, he shall give fresh notice in the manner provided in sub-section (1) or (2) as the case may be."

4. It is no doubt true that under section 22(3) the only restriction on the power of giving a notice of change in respect of an industrial matter is that it cannot be done before the expiry of two months from the date of conciliation proceedings. But this provision and section 77(1) have to be read together and reconciled. This point was raised in the Legislative Assembly in the course of the second reading of the Industrial Disputes Bill. The Hon. Mr. K. K. Munshi stated: "A registered agreement, settlement or award is an act of the parties by which the rights as to the dispute are merged in the agreement, settlement or award. Therefore where an agreement, settlement or award is concerned no question of change arises, and for six months after notice nothing can be done. Sub-clause (3) of clause 28 (section 28(3) of the Act) only applies to cases where no such thing as a registered agreement, settlement or award is an obstacle in the way of giving a notice of change. Conciliation proceeding as stated in clause 28 (3) can be completed in more ways than one. They may result in a settlement; or they may result in nothing being done. If they result in a settlement; ~~nothing is done and nothing is done~~, the act of the parties supervenes and clause 77 (section 77) will apply. But if there is no settlement by an act of the parties clause 28 sub-clause (3) would apply."

5. The argument of the management that the change proposed is different from the former change does not appear to be strictly correct. Any change relating to reduction intended to be of permanent or semi-permanent character in the number of persons employed or to be employed, or to be employed not ~~from~~ due to force majeure is a change in respect of an industrial matter under section 28 (see item 1 in Schedule II).

Partial or total reduction in the number of persons employed would be a change in respect of an industrial matter falling under item I in Schedule II. Consequently the notice of change given by the management of Mill-Khatav Makenji Spinning and Weaving Co., Ltd., on 29-8-1940 for a partial reduction in the number of persons employed in the Hook Folding Section and the present notice given by the management for a total reduction of persons employed in the same section would relate to the same change under item I in Schedule II. The change proposed would thus in effect terminate the registered agreement in a manner contravening the provisions of section 77(1). For that reason the proposed change does not appear valid.

6. Whether a notice of such change is thereby to be deemed to be illegal and the conciliation proceedings following such notice deemed to be void abinitio, are not questions on which the Bombay Industrial Disputes Act gives clear guidance. No section of the Act expressly gives to the Chief Conciliator power to reject a notice of change or treat it as void. Further, Chapter VI, the Chapter on Conciliation Proceedings is couched for the most part in mandatory language, e.g. Section 36(1), "the Conciliator shall then hold the conciliation proceedings in the prescribed form". But it seems reasonable to presume that the Chief Conciliator has power to consider the legality of changes proposed and the validity of notices; otherwise, the act would sometimes quite miss the mark in regard to industrial disputes. Until the Industrial Court or the High Court decides otherwise, it would seem advisable for the Chief Conciliator to assume that he has the above powers. What limits are to be set to those powers is by no means clear. In the present case, there appears to be considerable justification for the view that the notice is invalid and that the Conciliator is not competent to hold conciliation proceedings or at least has discretion not to proceed with the conciliation proceedings.

7 Attention is invited to R.L.A.'s U.R.No.1828, dated the 27th.Feb. 1941, to P.& S.D. where much the same points were dealt with.

Sd/- P.N.M. 30/6.  
Remembrancer of Legal Affairs.

U.R. to P.& S.D. No.5376, dated the 1st July 1942.

M.V.V./1.5.

The workers of the New Pratap Mill, Dhulia, gave through their elected representatives a notice of change under section 28(2) of the Bombay Industrial Disputes Act, 1938, demanding an increase in the dearness allowance at the rate of half an anna per day for every rise of one point in the cost of living index number over 150. On receipt of the notice the Khandesh, Perar and Burhanpur Millowners' Association, Dhulia, of which the New Pratap Mill is a member, gave intimation under section 29(2) of the Act that the other members of the Association, viz.

(1) The Pratap Spinning, Weaving and Manufacturing Company, Limited, Amalner, (2) The Khandesh Spinning and Weaving Mills Limited, Jalgaon, (3) The Gondalal Mills Company, Limited, Jalgaon, and (4) The Shree Laxmi Narayan Mills, Company, Limited, Chalisgaon, were affected by the change. The districts of East and West Khandesh have, for the purpose of administration of the Act, been divided by Government under section 3(18) into four local areas, viz., (1) The Chalisgaon Municipal Borough (2) The Dhulia Municipal Borough, (3) The Amalner Municipal Borough and (4) The Jalgaon Municipal Borough. The Khandesh, Perar and Burhanpur Millowners' Association, Dhulia, has been recognised by Government under section 74(1) for all the four local areas. The intimation given by this Association under section 29(2) is on behalf of their members in all the four local areas, though the notice of change has been given in respect of a Mill situate in the local area of the Dhulia Municipal Borough. The questions referred to the R.L.A. for consideration are;

(1) Whether having regard to the wording of section 29(2) of the Bombay Industrial Disputes Act, the Khandesh, Perar and Burhanpur Millowners' Association, Dhulia, can give an intimation on behalf of all the member Mills though situated in four different local areas in a dispute which has arisen in a single local area.

(2) Whether on intimation being given under section 29(2) the employees of such employers as are affected by the change under section 29(4) can also be deemed to have been likewise affected, and whether the representatives of such employees can participate in any of the proceedings which may be held under the Act.

2. Sub-section (2) of section 29 of the Bombay Industrial Disputes Act, 1938, provides: "Where an employee gives notice of a proposed change under sub-section(2) of section 28 and such change affects only one employer or some of the employers engaged in an industry or occupation the other employers or an association of employers engaged in such industry or occupation in that local area as the case may be may intimate to the representative of the employees that the other employers engaged in such industry or occupation and mentioned in such intimation are affected". 'Association of employers' as defined in section 3(3) means any combination of employers whether incorporated or not which has for one of its objects the regulation of conditions of employment in the industry conducted or carried on by its members, and which is recognised by the Provincial Government under section 74. 'Local area' as defined in section 3(18) means any area notified as such by the Provincial Government. Section 74 provides for power of Government to recognise any combination of employers as an association of employers for the purposes of this Act or to revoke any such recognition. The certificate of Recognition of A Association of Employers issued in Form B under rule 3 read with section 74 shows that an association may have as its members employers engaged in any industry in one or more than one local area. But the words in that local area' in sub-section (2) of section 29 would seem to indicate that the other employers or an association of employers engaged in such industry or occupation in that particular area to which the employee giving notice <sup>under section 28(2) belongs</sup> can alone give notice to the representative of employees, and consequently the employers or the association of employers engaged in other local areas/ are precluded from giving any notice under this provision. It is true that the words ' in that local area' do not appear at the end of the penultimate line of sub-section (2) of section 29; but reading sub-section (2) as a whole, the presence of these words would seem to be ~~implied~~ implied. The Khandesh, Berar and Burhanpur Millowners' Association has been recognised by Government under section 74 for four local areas. In the local area of the Dhulia Municipal Borough, the New Pratap Spinning,

M.V.V./2.5

Weaving and Manufacturing Company, Limited, is the only Mill which is a member of the said Association and it was the employees of this Mill that gave a notice under sub-section (2) of section 28. Consequently the Association could not give any valid notice under Sub-section (2) of section 28. The notice given by it on behalf of the other Mills in other local areas is not therefore competent.

3. The second question for consideration does not survive.

Gd/- P.H.K.  
19/7.

Remembrancer of Legal Affairs.

U.R. to P. & S. Deptt. No. 5754, dated the 15th July 1943.

P.V.V.  
2/5.

Office of the R.L.A.

It appears that the Textile Labour Association, Ahmedabad, is a representative union registered under section 12 and the Mill Owners' Association, Ahmedabad, is recognised by Government as an "Association of Employers" under section 74 of the Bombay Industrial Disputes Act, 1938. The first question for the consideration of the R.L.A. is whether if the Textile Labour Association gives notice on behalf of a whole class to the Mill Owners' Association, (1) no employees of the Mill Owners' Association of that class can have a representative other than the Textile Labour Association in respect of that change, and (2) even if among the employees of that class in particular number mill there is none belonging to the Textile Labour Association yet the employees concerned of that mill are not entitled to elect a representative to give notice of the same change.

2. Employees desiring a change are required to give notice in the prescribed form to the employer through the representative of employees under sub-section (2) of section 23 of the Bombay Industrial Disputes Act. Rule 47(1) of the Bombay Industrial Disputes Rules, 1939, provides "Any employee who desires a change in any standing order settled under section 26 or 27 in respect of any industrial matter mentioned in Schedule II shall observe the following procedure:

(a) in <sup>a</sup>case where the employee is a member of a registered union and the majority of the employees directly affected by the proposed change are members of such union, the notice of the employer shall be given through the registered union;

(b) in ~~an~~ a case where the employee concerned is a member of a representative union and some of the employees directly affected by the proposed change are members of such representative union, the notice of change to the employer shall be given through the representative union;

(c) in case where the employee is not a member of a registered or a representative union or where a registered union is qualified to represent the employees because the majority of the employees concerned with the proposed change are not members of

the union the employee concerned shall follow the procedure laid down in rules 18, 19 ~~and~~ and 20". Those rules prescribe the procedure for electing representatives of the employees. "Representative of employees" as defined in section 3(29) means (i) where the majority of employees directly affected by a change are members of a registered union, such registered union; or (ii) where ~~some~~ of the employees directly affected by the change belong to a representative union, that representative union; or (iii) in other cases such representatives not being more than five as may be elected in the manner prescribed by employees directly affected by the change from among themselves; or (iv) in cases where representatives are not elected under clause (iii), and in all other cases not falling under any of these clauses, the Labour Officer.

"Representative Union" means a registered union declared to be a representative union (see section 3(30) of the Act). Unions are registered under Chapter II.

3. After a notice of change is given the conciliation or arbitration proceedings commence. If they end in a registered agreement, a settlement or an award, agreement, settlement or award shall be binding upon all persons who are parties thereto (section 76(1) of the Act). Clause (a) of the proviso to section 76(1) provides that in the case of an employer, who is party to such agreement, settlement, submission or award his successors, heirs, assigns in respect of the undertaking as regards which the agreement, settlement, submission or award is made shall be bound by such agreement, settlement submission or award. Clause (b) recites that in the case of a union which is a party to such agreement, settlement, submission or award all persons who are members of such union at the date of at the date of such agreement, settlement, submission or award or who become members of the union thereafter shall be bound by such agreement, settlement, submission or award,

Sub-section (2) of section 76 provides that in cases in which

M.V.V.

2/5.

a representative union is a party to any agreement, settlement submission or award, the provincial Government may after giving the parties affected an opportunity of being heard by notification in the official Gazette direct that such agreement, settlement, submission or award shall be binding upon such other employers and employees in such industry or occupation in that local area as may be specified in the notification. Reading these provisions together it appears that an employee can give a notice of change through a registered or a representative union only when he is a member of it and any agreement, settlement, or award would be binding upon all persons who are parties thereto.

4. It appears that the first part of the question assumes that the employees of the Millowners' Association who desire a change are members of the Textile Labour Association, Ahmedabad. If so, their representative would be the Textile Labour Association itself and they cannot have any other representative. In the second part of the question it is stated that among the employees of a particular member mill there is none belonging to the Textile Labour Association. The Textile Labour Association would not be their representative and any agreement, settlement or award between that Association and the Millowners' Association would not be binding on these employees unless it is so made by Government under section 76(2). It appears therefore necessary that if these employees give a notice of change, it should be proceeded with. Since however the change proposed is common the conciliation or arbitration proceedings in respect of both might be carried on together and a common settlement, agreement or award arrived at.

5. The second question for consideration is whether, where employees (i.e. weavers) of a particular member mill, none belonging to the Textile Labour Association elect their representative in respect of a desired change and the representative gives notice, if the Textile Labour Association subsequently gives notice of the same change to the Millowners' Association in respect of all the Millowners' Association's employees of the

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same class(i.e. weavers), the elected representative ceases to be a representative. The reply to the question is in the negative for the Textile Labour Association not being a representative of employees who are not members thereof, the notice of change given by such members is not rendered inoperative by reason of a notice of similar change being given by the Textile Labour Association and their representative would continue to function.

6 The third question for consideration is where employees of a non-member mill, none belonging to the Textile Labour Association, desire a change or have given notice by an elected representative, what is the effect, if the Textile Labour Association gives notice of the same change to the Millowners' Association and all non-members purporting to represent all the employees concerned in the whole area. The reply would be that such notice of change by the Textile Labour Association will not affect the notice already given by the employees who are not members of the Textile Labour Association. Both notices will have to be proceeded with, though not quite independently.

Sd/- P.N.H.  
24/8.

Remembrancer of Legal Affairs.

U.R. to P.S.Deptt. No.6933, dated 26th August 1942.

M.V.V./2.5

Office of the R.L.A.

R.L.A.'s opinion No. 6933 dated the 26th August 1942 was on some points based, as it now transpires, on a misunderstanding of facts not licidly stated in the said letter of reference and on the assumption that rule 47, especially sub-rule (1) (c) of the Bombay Industrial Disputes Rules, 1939, presented the law correctly. On further consideration it now appears that rule 47(1) which provides for representation of employees is not strictly in keeping with section 3(29) of the Bombay Industrial Disputes Act, 1938, and can to some extent be regarded as ultra vires section 84(1) and (2) (b) read with the other provisions of the Act. The language of sections 3(29), 43 and 46 is also not perspicuous on the question of representation of employees.

2. The Textile Labour Association is a registered union declared to be a representative union registered under section 12 of the Bombay Industrial Disputes Act, 1938. Under section 3 (29) (ii) a representative union is a representative of employees in cases where some of the employees directly affected by the change are members of it. It follows, therefore, that when the Textile Labour Association on behalf of some of its members give notice of change directly affecting the employees as a class to the Millowners Association then those employees of that class belonging to a member will and who are not members of the Textile Labour Association would not be entitled to have separate representation of their own in respect of such change. But where the employees of the member mill who are not members of the Textile Labour Association desire a change the position is

not

not at all clear as to who should be their representative for the purpose of giving notice. On a strict interpretation of sect. 3(29) the Textile Labour Association as the representative union would be the proper representative of such employees for the purpose of notice unless the employees had their own registered union qualified to represent them. But the position is somewhat complicated by rule 47(1) of the Bombay Industrial Disputes Rules, 1939, which lays down that .

"47. (1) Any employee who desires change in any standing order settled under section 26 or in respect of an industrial matter mentioned in Schedule II shall observe the following procedure:-

(a) in a case where the employee is a member of a registered union and the majority of the employees directly affected by the proposed change are members of such union, the notice to the employer shall be given through the registered union;

(b) in a case where the employee concerned is a member of a representative union and some of the employees directly affected by the proposed change are members of such representative union, the notice of change to the employer shall be given through the representative union;

(c) in a case where the employee is not a member of a registered or a representative union or where the registered union is not qualified to represent the employee because the majority of the employees concerned with the proposed change are not members of the union, the employee concerned shall follow the procedure laid down in rules 18, 19 and 20".

Rules 18, 19 and 20 prescribe the procedure for electing representatives of the employees.

3. If any reliance is to be placed on rule 47(1) (c) it would appear that where the employees of a member mill who are neither members of a representative union or a registered union desire a change the notice of change must go through

their elected representatives. But as I have already observed rule 47(1) is in conflict with section 3(29) of the Bombay Industrial Disputes Act the question of representation of employees and appears to be ultra vires section 84 (1) and (2) (c) read with the other provisions of the Act.

4. Assuming that employees of a sugar mill who are not members of the Textile Labour Association are entitled by virtue of rule 47(1) to give notice of change through their elected representatives the question then arises what would be the position if such notice is given by the elected representatives and the Textile Labour Association follows suit by giving a notice of the same change on behalf of the employees as a class. Would the elected representatives be entitled to represent the employees of the sugar mill in all subsequent proceedings or would they be displaced by the Textile Labour Association and cease to function as representatives? There is nothing in the Act or Rules expressly providing for disengagement in such cases. But having regard to the scheme of the Act the definition of "Representative of employees" in section 3(29) it would appear that the elected representatives of the employees mentioned in clause (iii) would be the proper representatives only if the employees cannot be represented by a qualified registered union or representative union mentioned in clauses (i) and (ii). It follows therefore that even though the elected representative were legally entitled to give notice of change on behalf of the employees of the sugar mill under rule 47(1) (c), they would not be entitled to represent these employees in subsequent proceedings under the Act once the Textile Labour Association comes on the scene and gives notice in respect of the same change on behalf of the sugar mill employees as a class. There is nothing in the Act to suggest that the representatives elected for giving notice must necessarily be the representatives for subsequent proceedings as well. The two functions need not be combined in the same union or representatives and can be separately carried out as envisaged in rule 12.

5. Assuming, therefore, that the Textile Labour Association as a representative union would be the proper body to represent the employees as a class in respect of a notified change, the further question-

As a class in respect of a notified change, the further question arises whether the employees of the member mill who are not members of the Textile Labour Association would be bound by any settlement or award to which the Textile Labour Association is a party. In the case ~~decided~~ decided by the Industrial Court it has been held that where a representative union is a party to an award, the award would be binding on all employees in the industry, present as well as future, represented by the representative union and affected by the change. This finding is based on two assumptions.

Reported at pp.3576  
of Part I of the  
Bombay Govt. Gazette  
dated 2/10/41.

(1) that section 76 is applicable to the parties to the award as well as to those entitled to receive its benefits, and

(2) that proviso (b) to section 76(1) has no application to representative union.

These assumptions seem to be of doubtful validity.

Section 76(1) enacts that a registered agreement, a settlement a submission or an award shall be binding on all persons who are parties thereto. The parties referred to would normally be the employer on the one side and the union or elected representative of employees on the other. One would have thought that all the employees represented by the union or elected representatives would also be bound by award. But curiously enough proviso (b) to section 76(1) enacts that in the case of a union which is a party to the agreement, settlement, submission or award, all persons who were members of such union at the date of such agreement, settlement, submission or award or who become members of the union thereafter shall be bound by such agreement, settlement, submission or award. The plain meaning of this proviso would appear to be that the agreement, settlement, submission or award would not be binding on those employees who are not members of the union unless under sub-section (2) the Provincial Government makes it binding upon them.

With due deference to the view taken by the Judges of the Industrial Court the word "union" in proviso (b) cannot be given a limited import so as to exclude a representative union from the scope of its meaning as defined in section 3(34), and there is nothing in the context of section 76 to suggest that the representative union was intended to be excluded therefrom. In view, however, of the Judgment of the Industrial Court, the R.L.A. would advise the Commissioner of Labour to follow the law as expounded in that Judgment.

Sd/- P.N.W.  
27/11.

Remembrancer of Legal Affairs.

U.R. to P. & S. Department No. 6347, dated 27.11.1943.

H.V.V.  
2/5.